

AMENDMENT TO AGREEMENT
OF MARCH 13, 1990

THIS AGREEMENT is made this 25 day of November, 1991, by and between Brown & Root I, Inc., ("Brown & Root") and the Town of Cape Charles, ("Town").

WHEREAS, the parties have entered into an Agreement dated March 13, 1990, in contemplation of the annexation of certain property now owned by Brown & Root; and

WHEREAS, the Commission on Local Government ("Commission"), after due notice, hearings and public comment, has issued a report finding, among other things that the Town had met the requirements of Section 15.1-1041 of the Virginia Code, and further recommended approval of the annexation of the area sought in the Town's Notice of Annexation; and

WHEREAS, the Town and Brown & Root wish to amend their Agreement of March 13, 1990, (hereinafter Prior Agreement) as set forth herein;

THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual promises contained herein, the parties agree to amend and modify the provisions of the Prior Agreement as provided herein:

1. Paragraph ten (10) of the Prior Agreement shall be amended to add the following:

(a) The Town and Brown & Root agree to abide by the "Proposal for Water and Waste Water Treatment Plant Improvements" submitted to the Commission on Local Government and referred to by the

Commission on Local Government in its report on the proposed annexation by the Town of Cape Charles, dated February 1990.

(b) The Town and Brown & Root acknowledge that if subsequent improvements are made by Brown & Root to the Town's Waste Water Treatment Plant as provided in the Prior Agreement, such improvements could result in an increase in the effluent treatment standards from the State Water Control Board (SWCB). Brown & Root agrees that if it expands the Town's Waste Water Treatment Plant as provide in the Prior Agreement, that such expansion may include having to pay for the cost of its share of capacity for increasing the Town's treatment standards to tertiary treatment;

(c) The Town agrees that no industrial waste shall be accepted into the municipal waste water system from Accawmacke Plantation or other businesses or developments to whom such municipal services are offered without pretreatment of such waste or plant modification.

(d) Brown & Root and the Town agree that any reservation of treatment capacity in or from the Town's water or waste water systems, as provided in the Prior Agreement, for the use of Accawmacke Plantation shall be derived from the capacity created by investments in the Town's water and/or waste water systems, made by Brown & Root.

2. Brown & Root agrees to comply with the terms of paragraph four (4) and the attached Schedule A, both of which are a part of that certain agreement, entitled "Agreement", dated November 25, 1991, between Brown & Root and Northampton County,

which Agreement was signed just prior hereto and the terms of the aforesaid paragraph four (4) and Schedule of the Agreement are incorporated herein by reference.

3. In its development of Accawmacke Plantation, Brown & Root shall consider proposals and bids submitted by bondable, local material persons and contractors and shall give good-faith consideration to proposals and bids of local material persons and contractors, but subject to its sole right to select the best qualified bidders. Local Contractors and Local Material Persons shall mean contractors or material persons whose principal residences are in Northampton or Accomack Counties or whose principal places of business are located in one of said Counties or who employs persons at least fifty percent (50%) of whom are residents in said Counties.

4. Brown & Root agrees that its rezoning application, referred to in the Prior Agreement, shall include the following additional Proffers:

(a) The portion of Accawmacke Plantation located outside the Resource Protection Areas (RPA's), as specified by the Chesapeake Bay Local Assistance Board Regulations, which will be disturbed by construction shall be designed in such a manner as to direct runoff of surface water away from Old Plantation Creek and the Chesapeake Bay and into an overall storm water management system, except that waterfront areas (where grade conditions do not permit) may avoid this requirement if the post-development non-point source pollution runoff load does not exceed the pre-development load based upon

*to be
directed
as water
features on
the golf
course*

average land coverage conditions. Where existing grade conditions permit, waterfront areas shall be designed to feed into an overall storm water management system.

(b) Brown & Root shall utilize Best Management Practices (hereinafter "BMP's") for the retention of storm water runoff. BMP's shall include, but not be limited to, sedimentation ponds, wet ponds, natural swales, and constructed berms to intercept sheet runoff and direct it onto the property. At a minimum, such ponds shall be designed to accommodate water generated by storm event having a twenty-five (25) year frequency.

(c) Brown & Root shall utilize erosion and sediment control measures during all phases of land disturbing activity on Accawmacke Plantation as required by local Erosion and Sediment Control Ordinances. Unless modified by appropriate variances, BMP's shall be utilized in all aspects and phases of the development of Accawmacke Plantation by the developer.

(d) Brown & Root has retained an archaeologist with experience in surveys and excavations of historic sites and with extensive experience on historic sites in the Chesapeake Bay region. Said archaeologist will complete a Phase I Archaeological Survey of the Brown & Root property to be developed as Accawmacke Plantation. As development occurs, sites discovered as a result of the Phase I Survey which are subject to the jurisdiction of Section 106 of the National Historic Preservation Act of 1966 will be preserved or left undisturbed as the archaeologist deems appropriate. All parties agree to use best efforts to prevent any

need
to
ask for

this phase I

JFB

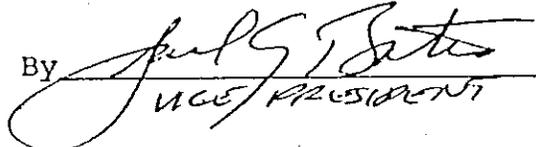
adverse impacts upon the pace of development of Accawmacke Plantation as a result of compliance with this paragraph.

(e) Brown & Root shall limit the maximum residential density for Accawmacke Plantation to three thousand (3000) residential dwelling units.

5. Except as modified herein all of the terms and conditions of the Agreement of March 13, 1990, are ratified and incorporated herein by reference.

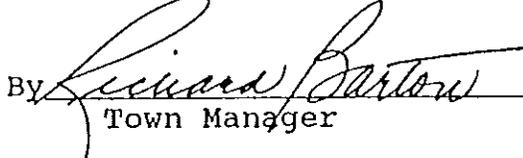
BROWN & ROOT I, INC. . . .

By


VICE PRESIDENT

TOWN OF CAPE CHARLES . . .

By


Town Manager

SCHEDULE A

SCHEDULE FOR ROAD IMPROVEMENT

Brown & Root shall commence construction of the new connector road referenced in Paragraph 4 of this Agreement (hereinafter New Connector), when:

1. If officially approved in writing by the Virginia Department of Transportation, District Traffic Engineer, or his designee, (hereinafter "VDOT Official") as an appropriate measure of the reasonable necessity of the New Connector, then construction of the New Connector shall commence when (a) the average annual peak hour volume, entering and leaving the southern tract of Accawmacke Plantation exceeds four hundred (400); and in the same year, (b) when the average annual peak hour volume on Route 642, as measured at the easternmost portion of the southern tract of Accawmacke Planation exceeds two hundred fifty (250).

For purposes of determining the average annual peak hour volume entering and leaving the southern tract of Accawmacke Plantation, a total of two (2) vehicular counts on the primary ingress and egress roads within the southern tract of Accawmacke Plantation shall be used to determine the peak hour total two-way traffic count entering and leaving the southern tract of Accawmacke Plantation. The peak hour volumes entering and leaving the southern tract of Accawmacke Plantation onto Route 642 shall then be averaged on a calendar-year basis.

2. If not officially approved by the VDOT Official as provided in Paragraph 1 above, then the construction of the New Connector shall be commenced according to a schedule mutually acceptable to Brown & Root's traffic engineers and the VDOT

Official. Such acceptability shall be manifested by a written document executed by both the VDOT Official and Brown & Root's traffic engineer.

3. In the event that the schedule to commence construction of the New Connector cannot be established pursuant to either Paragraph 1 or 2 above, then the parties agree to submit for binding and final arbitration the issue identified below to an arbitrator who shall be a traffic engineer and who shall be acceptable to Brown & Root and the County. In the event that the parties cannot agree upon an arbitrator, then such arbitrator shall be appointed by the Judge of the Northampton County Circuit Court. The issue to be submitted shall be:

Pursuant to generally accepted traffic principles and standards, is the formula set out in Paragraph 1 an appropriate formula for determining construction commencement of the New Connector and, if not, what is an appropriate formula to determine commencement of construction.

The New Connector shall be built to a total paved width of at least twenty-four (24) feet pursuant to VDOT street subdivision requirements with an at-grade rail crossing near Bender's Row. Nothing contained herein shall preclude Brown & Root from constructing the New Connector in advance of the periods specified above.

For purposes of this schedule, "commence construction" shall be defined as posting any necessary construction bonds, and the commencement of clearing and grading activity within the New Connector corridor.

The cost of the arbitrator shall be shared equally between
Brown & Root and the County.

units in Accawmacke Plantation.

6. Brown & Root, or its successors, as appropriate, shall pay to the County the sum of Three Hundred Dollars (\$300.00) at the closing on the initial sale of each residential dwelling unit or upon the issuance of a Certificate of Occupancy on property within that portion of Accawmacke Plantation annexed by the Town, effective January 1, 1992. The payment shall increase from Three Hundred Dollars (\$300.00) to Four Hundred Dollars (\$400.00) for each triggering event that occurs more than ten (10) years after the first sale or certificate of occupancy.

All funds received by the County from such source shall be accounted for separately from other funds and revenues of the County. Such funds shall be used by the County exclusively for projects intended to lessen the impact upon displaced leaseholders, the development and/or improvement of public parks, wetlands parks, recreational amenities, educational facilities (including, but not limited to, public libraries), landscaping improvements adjacent to Old Stone Road (Virginia State Route 184), rescue squads, and fire departments located in the area from Cape Charles, Cheriton, Oyster, and other lands in lower Northampton County.

7. The County and Town acknowledge their support for the concept of the development of Accawmacke Plantation. To the extent that the development is appropriate to the best interest of Northampton County, the County agrees to cooperate with Brown & Root in facilitating the permitting processes and working toward the successful completion of the development of Accawmacke Plantation.

14 Certificates
of Occupancy
1,000.00

14/13

8. Subject to the approval of this Settlement Agreement by the Court, the representations and obligations contained herein shall be binding upon the respective parties, their successors and assigns. Brown & Root's obligations contained herein shall apply only to the property designated as Accawmacke Plantation. Furthermore, the subsequent purchasers of individual lots or other incidents of individual ownership shall not incur the obligations of Brown & Root contained herein. It is the intent of the parties not to impose the obligations of Brown & Root contained herein upon the consumers who purchase lots, condominiums, and/or memberships within Accawmacke Plantation.

The obligations of Brown & Root, contained herein, except as provided above, shall run with the land and be binding upon the subsequent owners of Accawmacke Plantation, which owners shall assume all of those obligations and relieve the prior owner thereof.

9. The laws of the Commonwealth of Virginia shall apply to this Agreement which has been executed in Northampton County, Virginia.

10. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall be an original and all of which counterparts taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF and intending to be legally bound hereby, the parties have signed this Agreement the day and year first above written.

TOWN OF CAPE CHARLES

By Edward A. Parry III

Its Mayor

COUNTY OF NORTHAMPTON

By Charles A. Bell

Its Chairman

BROWN & ROOT I, INC.

By Paul G. Bates

Its Vice President

State of Virginia

County of Northampton

The foregoing instrument was acknowledged before me this 25th day of November, 1991, by E. A. Parry, III, Mayor, for and in behalf of the Town of Cape Charles.

My Commission expires: 1-20-95

Ella D. Stratton
Notary Public

State of Virginia

County of Northampton

The foregoing instrument was acknowledged before me this 25th

day of Northampton, 1991, by Charles G. Bell, Chairman, for and in behalf of Northampton County.

My Commission expires: 6-30-93

Elizabeth L. Thomas
Notary Public

State of Virginia

County of Northampton

The foregoing instrument was acknowledged before me this 25th day of November, 1991 by Joel G. Bates, Vice President, for and in behalf of Brown & Root I, Inc.

My Commission expires: 6-30-93

Elizabeth L. Thomas
Notary Public